REMARKS

Status of the Claims

The Office Action mailed May 28, 2009 noted that claims 1-3, 7, and 12-26 were pending and rejected all claims. Claims 1, 7, 12-17, 20, 23, and 26 are amended. No claims are cancelled. No new claims are added. No new matter is believed to be presented.

It is respectfully submitted that claims 1-3, 7, and 12-26 are pending and under consideration.

Rejection under 35 U.S.C. § 112

The Office Action, on page 2, rejected claims 1, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 23 for reciting an allegedly relative term which render the claims indefinite. Claims 1, 7, 12, 13, 14, 15, 16, 17, 20, and 23 are amended and withdrawal of the rejection is respectfully requested. Claims 18 and 19 do not recite as the Office Action asserts.

Rejection under 35 U.S.C. § 102

The Office Action, on page 3, rejected claims 1-3, 7, and 12-26 under 35 U.S.C. § 102(e) as being anticipated by Smith. This rejection is respectfully traversed below.

It is respectfully submitted that the next Office Action may not be made final because the Office Action has not addressed the claim language of claims 18 and 19. The Office Action, on page 5, rejected claims 18 and 19 and asserted that claims 18 and 19 recite "a selection from the may be made without displaying the menu," but neither claim 18 or 19 recite the above features. Rather, claims 18 and 19 recite "the radial marking menu portion represents a grouping of menu items based upon frequency of selection" which was not addressed by the Office Action. Thus, the Office Action has failed to adequately articulate a basis of rejection for both claims 18 and 19 and has thus improperly shifted the burden of rebuttal to the Applicant. It is respectfully requested that the Examiner consider the above claim features of claim 18 and 19 which were not considered.

The Office Action, on page 7, asserts that Exhibit B of the Declaration is insufficient to support "determining selection criteria for the type and a menu item selection based on a method of selection from the one of the stroke and the location" and the Office Action requests the Applicant to clearly map the above features to pages 20-21 of Exhibit B. The following two paragraphs on pages 20, line 34 to page 21, line 12 of Exhibit B provide support for the above features:

Marking is another menu selection acceleration which works as follows. A user presses down on the screen with the pen and waits for a short interval of time (approximately 1/3 second). A radial menu then appears directly under the tip of the pen. A user then highlights an item by keeping the pen pressed and making a stroke towards the desired item. If the item has no sub-menu, the item can be selected by lifting the pen. If the item does have a sub-menu, it is displayed. The user then continues, selecting from the newly displayed sub-menu. Figure 1(a) shows an example. Lifting the pen will cause the current series of highlighted items to be selected. The menus are then removed from the screen. At any time a user can indicate "no selection" by moving the pen back to the center of the menu before lifting, or change the selection by moving the pen to highlight another item before lifting. Finally a user can "back-up" to a previous menu by pointing to its center.

The other, faster, way to make a selection without popping up the menu is by drawing a mark. A mark can be drawn by pressing the men down and immediately moving. The shape of the mark dictates the particular series of items selected from the menu hierarchy. Figure 1(b) shows an example.

Thus, the first paragraph provides support for "a method of selection from...the location." The second paragraph provides support for "a method of selection from...the stroke." The second paragraph also provides support for "a selection from the menu is made without displaying the menu with a single, uninterrupted stroke." Additionally, page 23, lines 10-11 of Exhibit B provides support for "the radial marking menu portion represents a grouping of menu items based upon frequency of selection" as claimed in claims 18 and 19.

Thus, it is respectfully submitted that Smith is not a valid reference and cannot be used to anticipate the claims.

Additionally, as an example, claim 1 patentably distinguishes over Smith because nothing cited or found discusses "a selection from the menu is made **without displaying the menu with a single, uninterrupted stroke.**" As noted in the Office Action on page 4, Smith discusses that selection may be made when the menu is displayed in Figure 3E. It is not possible according to Smith, to make a selection from the menu without the menu being displayed. As noted in Applicant's previous response on page 10, in Figure 7 of Smith, 702, "Display Spot GDE" is the first step of accepting a selection from one of the secondary interfaces in a collar of the GDE. Selection in Smith is a two-step process. Before a selection may be made, a collar of the GDE must be selected and then a second selection must be made from a secondary interface which displays after a delay after a selection of the collar. Figure 6 of Smith shows a properties menu which depicts that there is a delay before the collar appears and disappears and a slider which may be used to set the delay. There is not an option to disable the delay, and

thus a selection may not be made with a single, uninterrupted stroke, because there is a delay before the collar appears. Thus a selection cannot be made in Smith if the GDE is not displayed and the selection cannot be made with a single, uninterrupted stroke. Therefore, claim 1 patentably distinguishes over Smith.

Independent claims 7, 12, 13, 14, 15, 16, 17, 20, 23, and 26 patentably distinguish over Smith for reasons similar to those discussed above with respect to claim 1.

Independent claim 26 further distinguishes over Smith because nothing cited or found discusses "selectable items in the radial marking menu sub-menu are included based on a priority." The Office Action did not address the above features recited in claim 26 and nothing found in Smith discusses that items in the radial marking menu sub-menu have items based on a priority.

The dependent claims depend from the above-discussed independent claims and although Smith is not a valid reference, they are patentable over Smith for at least the reasons discussed above.

Summary

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.
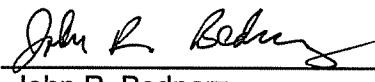
Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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